

FILED

IN THE UNITED STATES DISTRICT COURT U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS EASTERN DISTRICT OF TEXAS

SEP 29 2005

PARIS DIVISION

DAVID J. MALAND, CLERK

BY
DEPUTY

PAUL ALLEN SCHUMACHER

§

VS.

§ CIVIL ACTION NO. 3:02cv16

FANNIN COUNTY, ET AL

§

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Don D. Bush. Defendants Moore and Foster have filed a motion to dismiss or motion for summary judgment (doc. nos. 37 and 38). The Magistrate Judge has issued a Report and Recommendation recommending that the motion be denied with respect to the claim of excessive use of force and granted with respect to the claim of deliberate indifference to serious medical needs.¹ Defendants Moore and Foster and plaintiff filed objections to the Report and Recommendation.

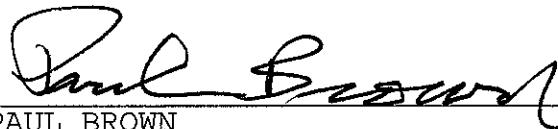
The Report of the Magistrate Judge, which contains his proposed findings of fact, conclusions of law and recommendation for the disposition of such action, has been presented for consideration and, having made a *de novo* review of the objections, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without

¹ The Report and Recommendation actually recommends that the motion be denied. However, based on the discussion set forth on page 10 of the Report and Recommendation, it is clear the Magistrate Judge meant to recommend that the motion be granted with respect to the claim of deliberate indifference to serious medical needs.

merit.² Therefore, the Court hereby overrules the objections and adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that motion to dismiss or motion for summary judgment is **GRANTED** with respect to the claim of deliberate indifference to serious medical needs and **DENIED** with respect to the claim of excessive use of force.

SIGNED this 9th day of September, 2005.


PAUL BROWN
UNITED STATES DISTRICT JUDGE

² Defendants Moore and Foster object, *inter alia*, that the Magistrate Judge did not recommend that the motion be granted based on plaintiff's failure to exhaust administrative remedies. However, as defendants Moore and Foster acknowledge, this ground for dismissal was not raised in the original motion. As a result, the court does not believe it would be appropriate to consider this ground for dismissal at this stage. If defendants Moore and Foster wishes to file an additional motion for summary judgment asserting this grounds for dismissal, they shall have 60 days from the date set forth below to do so.